IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23-8-2007

Coram

The Honourable Mr.Justice S.J.MUKHOPADHAYA
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.1361 of 2003

1. Tamil Nadu Handloom Weavers Co-Op Society,
rep.by its Managing Director,
Balasundaram Building,
350, Pantheon Road,
Chennai - 600 008.

2. The Regional Manager,
Tamil Nadu Handloom Weavers Co-Op Society,
rep.by Regional Officer,
A.M.M. Building, Mettupalayam Road,
Coimbatore - 43.

3. The Manager,
Co-Operative Silk Palace Thamarai Silk House,
616, Raja Street,
Coimbatore - 1. ...Appellants/Respondents 2 to 4

Vs.

1. K. Senthilvel

2. The Presiding Officer,
Labour Court,
Coimbatore. ...Respondents/Petitioners/
1st Respondents

This Writ Appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.15344 of 1994 dated 1.2.2002 petition under Article 226 of constitution of India to issue a writ of certiorarified mandamus or any other writ, order or direction of a like nature calling for the records on the file of the first respondent pertaining to his order passed in I.D.No.292 of 1989 dated 21.10.93 and quash the same in so far as it fails to grant the relief of the rein statement in service together with full backwages, continuity of service and all other attendent benefits to the petitioner and consequently direct the respondents 2 to 4 to reinstate the petitioner in service together will full backwages, continuity of service and all other attendent benefits.

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For Appellants : Mr.B.S.Gnanadesikan

For 1st Respondent : Ms.A.V.Bharathi

Second Respondent : Court

J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order passed by the learned single Judge in W.P.No.15344 of 1994 dated 1.2.2002, partly allowing the writ petition filed by the first respondent herein ordering reinstatement with 25% backwages.

2. The brief facts necessary for disposal of the writ appeal as could be seen from the affidavit are that the first respondent herein/writ petitioner was employed as Billing Clerk-cum-Salesman under the 4th respondent in the writ petition from 1979 and he was kept in temporary post. From 1985 till 29.2.1988 he was continuously employed for more than 300 days and on 26.2.1988 he made request claiming confirmation and therefore the management terminated his services from 29.2.1988. The said termination having been without any notice and without paying compensation as required to be paid under section 25F of the Industrial Disputes Act, 1947, the writ petitioner raised Industrial Dispute and the same was tried as I.D.No.292 of 1989 by the second respondent.

3. The Labour Court, by award dated 21.10.1993 held that the termination of the writ petitioner without paying retrenchment compensation and without issuing any notice or pay in lieu of notice, is unsustainable and ordered that the writ petitioner is entitled to get salary for 15 days per annum, under section 25F of the Industrial Disputes Act, 1947, for three years relating to the years 1985, 1986 and 1987, and one month salary in lieu of one month notice. The Labour Court also found that the writ petitioner, even though was appointed temporarily, he shall be considered as workman. The said award of the Labour Court is accepted and implemented by the appellants Management.

4. As against the denial of reinstatement and backwages, the first respondent herein filed the above writ petition contending that once the order of termination was held to be bad for non-compliance of the provisions of Section 25F of the Industrial Disputes Act, 1947, the order is void and non-est and the employee would be deemed to be in service as if his services were never terminated and all consequential benefits should follow as a matter of course and reinstatement can be denied only if it is not possible, because industry is closed and the Labour Court may deny backwages only on proof of gainful employment. The writ petition is filed to quash the order of the Labour Court insofar as it

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fails to grant the relief of reinstatement in service together with backwages, continuity of service and all other attendant benefits to the first respondent herein and to reinstate the writ petitioner in service with full backwages, continuity of service, etc.

5. The learned single Judge, considering the factual aspect, which was proved by the writ petitioner/first respondent herein before the Labour Court that he worked under the appellants for more than 300 days in the last 12 months preceding to his termination held that the writ petitioner is entitled to get permanent status as workman as per section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, and in view of the factual finding given by the Labour Court that the first respondent/writ petitioner continuously worked from 1985 to 29.2.1988, which exceeds more than 480 days in a period of 25 calendar months, ordered reinstatement with 25% backwages from the date of termination till the date of reinstatement with annual increment thereto, with all other attendant benefits, excluding maternity benefits according to rules and regulations of the appellant Co-operative Society. As against the said order made in the writ petition, this writ appeal is filed.

6. The learned counsel appearing for the appellants argued that the learned single Judge was not right in ordering reinstatement with 25% backwages as the first respondent herein/writ petitioner has not worked for more than 480 days in a period of 24 calendar months and he worked only for 55 days and the first respondent having failed to prove that he was not gainfully employed during the period of non-employment, the learned single Judge was not right in awarding 25% backwages. The learned counsel also submitted that the respondent was appointed only on daily wage basis that too temporarily and hence the order of the learned single Judge is liable to be set aside.

7. The learned counsel for the first respondent on the other hand submitted that the Labour Court has specifically found that the writ petitioner/first respondent worked more than 480 days in the period of 25 calendar months and also found that the first respondent is a workman and that the termination order was passed without following section 25F of the Industrial Disputes Act, 1947. The said finding having become final, as the award was not questioned by the appellants, it is not open to the appellants now to contend that the first respondent is not entitled to be reinstated and once the termination order is found illegal, the workman shall be deemed to be in service and he is entitled to get all benefits as he was prevented from discharging his duties. The learned counsel also submitted that insofar as the award of backwages is concerned, unless it is proved that the workman was gainfully employed during the non-employment period, backwages can also be awarded and in this case the learned single Judge after ordering reinstatement, awarded only 25% backwages and other benefits are directed to be given as per the service regulations and therefore there is no illegality in the order passed by the learned single Judge.

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8. We have considered the submissions made by the learned counsel appearing for the appellants as well as first respondent.

9. Admittedly the award passed by the Labour Court was not challenged by the appellants and in fact the said award was accepted by the appellants by paying the amount ordered to be paid by the Labour Court. The plea that the first respondent was appointed only for 55 days as contended by the appellants cannot be accepted in view of the finding given by the Labour Court that the first respondent was employed from 1985 to 29.2.1988. The first respondent having not been reinstated, challenged the award and prayed for direction for reinstatement with backwages and continuity of service. Hence the findings given by the Labour Court that the first respondent is a workman and before passing the order of termination, the provisions of section 25F of the Industrial Disputes Act, 1947, has not been followed and wages in lieu of notice period was also not given, have become final.

10. Now the questions to be decided is whether the learned single Judge was right in ordering reinstatement and awarding 25% backwages.

11. (a) The effect of non-compliance of Section 25F of the Industrial Disputes Act, 1947, while terminating a workman, was considered by the Supreme Court in the decision reported in (2005) 5 SCC 100 (Manager, Reserve Bank of India v. S.Mani) wherein the Supreme Court held that a direction for reinstatement for non-compliance of the provisions of Section 25F of the Industrial Disputes Act, 1947, would restore to the workman the same status which he held when terminated.

(b) In the decision reported in (2006) 1 SCC 337 (ONGC Ltd. v. Shyamal Chandra Bhowmik) the Supreme Court held that whether a person has worked for more than 240 days or not is a disputed question of fact and the proper remedy for a person making such a claim is to raise Industrial Dispute under the Act, so that evidence can be analysed and conclusion can be arrived at.

12. The decision cited by the learned counsel appearing for the appellants reported in (2007) 5 SCC 742 (Haryana Urban Development Authority v. Om Pal) has no application to the facts of this case as the appellants management has not challenged the findings given by the Labour Court and the findings have been allowed to become final.

13. In view of the above cited decisions of the Supreme Court, it is well settled in law that once termination is found illegal, the natural consequence to be followed is reinstatement. Reinstatement can be denied only if the Industry/Establishment is closed or the management lost confidence of the worker or retaining the worker in service will cause

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prejudice to the management, so that the relief could be moulded by awarding a lumpsum towards compensation instead of reinstatement. The appellants have not pleaded and proved either before the Labour Court or before the learned single Judge or before us that the first respondent is not entitled for reinstatement on any one of those grounds. In the absence of any such proof, once termination is found illegal, reinstatement in service is almost automatic. Hence the finding given by the learned single Judge that the first respondent/writ petitioner is entitled to get reinstatement as his termination was found illegal by the Labour Court, is hereby confirmed.

14. Insofar as ordering 25% backwages is concerned, the first respondent pleaded before the learned single Judge that he was not gainfully employed during the non-employment period and as no contra evidence having been produced by the appellants, the learned single Judge exercised his discretion and awarded 25% backwages and other service benefits as available under the service regulations. The appellants failed to produce any evidence before us to establish that the first respondent was gainfully employed during the non-employment period or was earning income during the non-employment period. In the absence of any proof submitted before us, we are of the view that the learned single Judge rightly awarded 25% backwages and the said finding is also consequently confirmed. It is also established before us that from 1.4.2003 the first respondent was reinstated and continuously working and he was also paid 25% of backwages, as could be seen from the letter dated 2.4.2003, of the Managing Director of the Appellants Society. If the first respondent finds any discrepancy in the said amount, it is open to him to file computation petition.

15. In the light of our above conclusion, the order of the learned single Judge in ordering reinstatement with 25% backwages and other benefits as per service regulations is confirmed.

There is no merit in the writ appeal and the same is dismissed. No costs.

vr

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To,

1. The Managing Director,
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   Coimbatore - 1.

4. The Presiding Officer,
   Labour, Court, Coimbatore.

+1 cc to Government Pleader Sr.No.53040.

+1 cc to Mr.B.S.Gnanadesikan, Advocate Sr.No.52760.

+1 cc to Mrs.A.V.Bharathi, Advocate Sr.No.52606.

TEJ(CO)
dcp/29.8

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